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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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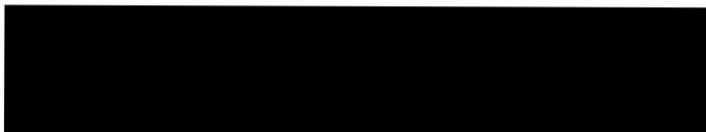
Date: **JAN 12 2010**

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner claims to be an IT consulting company. It seeks to permanently employ the beneficiary in the United States as a technical support specialist. On the petition, the petitioner requested classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

The director denied the petition on April 23, 2008, on the basis that the labor certification did not require a member of the professions holding an advanced degree.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. The regulation at 8 C.F.R. § 204.5(k)(4) states that, in order to establish that the offered position qualifies for the requested immigrant classification, "[t]he job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent." If the job itself does not require an advanced degree professional, the petition must be denied.

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as follows:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The job offer portion of the instant labor certification is located at Part A, Item 14 of Form ETA 750. This section of the labor certification describes the minimum education, training and experience required to perform the duties of the job offered. The labor certification states that the offered position requires an individual with a bachelor's degree and five years of experience, or, in the alternative, two years of college education and seven years of experience.

Since the labor certification does not require at least a master's degree or a bachelor's degree followed by five years of experience in the specialty, the job does not require an individual with an advanced degree. *See* 8 C.F.R. § 204.5(k)(4).

¹There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

On appeal, counsel argues that primary requirements of the labor certification require an advanced degree professional, but only the alternative requirements permit an individual to qualify for the offered position with less than a master's degree or a bachelor's degree and five of progressive experience. **Although factually true, this argument is without merit.** Both the primary and alternative requirements of the offered position set forth on the labor certification must require an advanced degree professional as defined by 8 C.F.R. § 204.5(k)(4).

In the alternative, counsel requests approval of the petition in the third preference professional category instead of the second preference advanced degree professional category. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988). In this case, the appropriate remedy would be for the petitioner to file a new petition on behalf of the beneficiary with the proper fee and required documentation.

The evidence submitted does not establish that the labor certification requires a member of the professions holding an advanced degree, and the appeal must therefore be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.²

ORDER: The appeal is dismissed.

² The director also noted that the petitioner failed to establish that the beneficiary had earned a United States baccalaureate degree or a foreign equivalent degree. 8 C.F.R. § 204.5(k)(2). Instead, the record indicates that the beneficiary earned a three-year bachelor's of commerce degree from the University of Delhi, India. This three-year degree is not a foreign equivalent degree to a U.S. baccalaureate and, therefore, the petition may not be approved for this additional reason. 8 C.F.R. § 204.5(k)(3)(i); *see also Matter of Shah*, 17 I&N Dec. 244, 246-47 (Reg'l. Comm'r. 1977).